Supreme Court, U.S.
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CASE NO. _____

In The

Supreme Court of the United States

Bartlett- Jay Hanford, Petitioner

v.

Mine Safety and Health Administration,

Respondent(s)

On Petition For Writ of Certiorari

United States Court of Appeal for the

Federal Circuit

Washington D. C. 20439

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1a. Government actions are always all ways considered valid unless timely challenged. Upon timely service upon the Secretary of Labor, Undersecretaries and field agents of the Mine Safety and Health Administration (MSHA) of an issue of law involving two Constitutional Conclusions of Law, Affidavit, Memorandum of Law and Bill of Particulars was a judicial court process, a legal determination rather than their conclusion of law necessary for delegated power of said agency to be validly exercised against petitioner. Was the appearance at the magazine site by MSHA without authority for failing to resolve two constitutional conclusions of law, acting solely upon MSHA's conclusion of law, a violation of the separation of powers because MSHA was precluded from the exercise of judicial power.

1b. Was a conclusion of law presented by petitioner and the conclusion of law set by the non-response of the Mine Safety and Health Administration, two conclusions of law that

needed to be resolved by an a valid judicial court process for the above said agency to have authority to move against petitioner.

1c. Upon learning of a planned invasion of Petitioner's Property by the MSHA from the Sheriff was a Bill of Particulars a valid process the petitioner could use as binding obligation upon MSHA for petitioner to learn the NATURE and CAUSE of their participation in an organized enterprise with the Sheriff, making the routine explosive permit contingent upon allowing MSHA to inspect the mine in an act of extortion. Could that obligation upon said agency be un-answerable without violating petitioners due process rights and Petitioner's right to petition under the 1st Amendment of the United States Constitution.

1d. Since the Alcohol Tobacco and Fire Arms Agency (ATF), which MSHA claimed to have authority by a memorandum of understanding with ATF declined to participate in the inspection of Petitioner's explosive magazine because petitioner was not a licensee or permittee of ATF,

but an INTRASTATE user of explosives. Should MSHA have waited for a more opportune time when said agency could obtain a valid court process either an injunction or a valid fourth amendment warrant signed by a judge of oath and affirmation to participate in a state search with a state employee. What was the effectuation of substantial Federal purpose for said agency to participate in an organized enterprise with the Sheriff to deny petitioner explosives to operate the mine.

2. Was the interference by the Mine Safety and Health Administration in a purely a State Matter without authority in an organized enterprise with the Sheriff, depriving petitioner the tool of his trade, explosives, a denial of the Right to Mine without due process of law?

3. Did the participation of the Mine Safety and Health Administration with a State Official on a purely State search require the Federal Mine Inspector to have a valid Fourth Amendment Warrant from a Federal Judge of Oath and Affirmation?

4. Did the deprivation of Petitioners fundamental liberties, the right to mine by the physical invasion of Mine Safety and Health Administration without authority or effectuation of a substantial federal purpose constitute a takings in violation of the fifth amendment of the united States Constitution?

5. Was the Writ of Precipe a valid instrument, a command from the sovereign, to cause the Writ of Mandate to be filed in the Court of Appeal for the Federal Circuit?

6. Can explosives be used as a ruse to violate Petitioner's fundamental liberties and right to mine?

LIST OF THE PARTIES

[x] All parties do appear in the caption of this case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petition respectfully prays that a Writ of Certiorari issue to review the Judgment below:

[X] For cases from federal courts:

OPINIONS BELOW

[X] FOR CASES FROM FEDERAL COURT

The opinions of the Court of Appeal for the Federal Circuit appears in this text. Not citable

The opinions of the United States Court of Federal Claims appears in this text. No indication whether published.

The opinion of the Court of Appeal for the District of Columbia appears in this text regarding Notice of Appeal put in U.S. mail before due date No indication whether published.

The opinion of the District Court for the District of Columbia appears in this text.

JURISDICTION

[X] The date on which the United States Court of Appeals for the Federal Circuit decided Petitioner's case was November 14, 2005.

[X[A timely petition for rehearing was denied by the United States Court of Appeal for the Federal Circuit January 18, 2006.

[X] No request for extensions were applied for by the petitioner. 60 days given for corrections.

[X] The jurisdiction of the Supreme Court is invoked under Title 28 U.S.C. Section 1254(1)

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

A) Separation of Powers of the Article I, Article II, Article III of the Federal Constitution; Article III Section III of the California State Constitution: The powers of state government are legislative, executive, and judicial. Person charged with the exercise of one power may not exercise either of the other, except as permitted by this Constitution.

B) Title 42 U.S.C. 1986 knowledge of a constitutional issue in the nature of two conclusions of law timely served upon the Secretary of Labor and key officials of Mine Safety and Health Administration including local field agents. The failure to resolve the issue of law between two constitutional conclusions of law and the movement forward against petitioner without resolving an issue of law was without authority, resulting in felonies committed in the name of the

Secretary of Labor by impersonating a judge and deprivation of rights under the color of law title 18 U.S.C. 242 where the penalty is spelled out. If you look into the file of Secretary of Labor you will find an issue of law unresolved, which Petitioner would like to have the Supreme Court resolve.

C) Expression essential to the ends that government be responsive to the will of the people so that change can come by peaceful means. It is paramount and mandatory that an administrative agency, the Mine Safety and Health Administration must be transparent and respond to non- related parties inquires to learn the nature and cause of their participation and respond to timely to presentation of affidavits and issues of law presented to above said agency. The non-response of said agency condoned by the lower courts deprived petitioner's right to petition under the first amendment of the united States Constitution and Rights under Administrative Procedure Act Title 5 U.S.C. 706. All unrebutted Affidavits stand as truth and judgment. A sworn unrebutted affidavit of truth stands true. . Mclovich Bidrs v City of San Bernardino, 160 CA, App Ct 3rd 981.)

D) The Right to Mine is an arcane right not known by many, but is a right of the people similarly enumerated in the Bill of Rights. As a right, The Right to Mine cannot be taken away as it was taken from Petitioner by the Mine Safety and Health Administration without due process of law under the fifth amendment of the united States Constitution. The right was vested by the driving of over 3000 feet of cross cuts and drifts and 600 feet of shafts and raises together with small shipments of ore over nine years,

E) Under the Provisions of Marshall v Waite 628 F 2nd 1255 (1980) for mines with no employees a Fourth Amendment warrant is a requirement for the Mine Safety and Health Administration to invade the privacy of Petitioner. Under the provisions of Byers v US 273 U.S. 28 (1928) for a federal agent to "piggy back" on State Search with State Official a Fourth Amendment Warrant is a requirement signed by a Federal Judge of Oath and Affirmation is a requirement for MSHA to Invade petitioner's Mine Property. MSHA had no warrant or injunction to participate in a purely state matter.

F. By neglect of due process of law petitioner was injured by the failure of the Mine Safety and Health Administration to resolve an issue of law between two constitutional conclusions of law, so without authority, making a legal determination, as to the rights of petitioner against petitioner's contrary conclusion of law. The physical invasion by the Mine Safety and Health Administration without the effectuation of a substantial federal purpose against petitioner in an organized enterprise with the sheriff to deprive petitioner of explosives, with knowledge through constructive notice of violations timely presented to MSHA, taking away all use of the patented mine property amounted to a takings without just compensation.

STATEMENT OF THE CASE

The Mine Safety and Health Administration (MSHA): Department of Labor had formed an organized enterprise with the local sheriff. While Petitioner had contracted with the Sheriff's Department to Inspect Petitioner's magazine, Petitioner did not contract with MSHA. MSHA had no probable cause to join the sheriff nor did I give them permission to join the Sheriff. The Sheriff knows MSHA destroys small mines and chose not to invite Cal OSHA, the state equivalent, which has the same capabilities because they cannot issue monetary fine. The Sheriff was going to do a surprise attack against, Petitioner, however his plans failed in his sinister scheme, by the death of the MSHA inspector from a heart attack. The cat was out of the bag due to the third cancellation when it was admitted by the deputy Sheriff that he was bringing MSHA whether Petitioner liked it or not. Knowing MSHA destroys small mines, through unlimited fines, from years of experience in the mining industry, I sought to protect my ten years of work, my livelihood, mining right and liberty right by serving the secretary of labor, and key officials and local officials of MSHA a controversy of law, bill of particulars, memorandum of law and Constructive

Notice of tumult that they were violating Appellant's constitutional rights. My conclusion of law is that MSHA is barred form regulation of my patented claim; I had the state and federal constitution, ie. the right to liberty, mining right and livelihood right; MSHA's contrary conclusion of law is that their power is absolute, they have jurisdiction over any tunnel, incline, shaft etc. anywhere in the several 50 states. Upon service of the above papers on the DoL and field agents of MSHA, the sheriff and MSHA was going to punish Petitioner and see that Petitioner would not get Petitioner's inspection and permit, making my simple explosive permit contingent upon inspection of the mine in an act of extortion. After retaining a lawyer, MSHA breeched the contract Petitioner had made with MSHA(for the resolution of two conclusions of law) and moved forward against Petitioner, without a fourth amendment warrant needed to accompany the sheriff under Byers v U.S. committing felonies as outlined in the memorandum of law they were served for failing to resolve the issue of law between two constitutional conclusions of law, involving the separation of powers. The charges: making a legal determination as a judge causing a deprivation of rights under the color of law for not resolving an issue of law squarely before the Department of Labor and MSHA and moving forward against plaintiff with knowledge and negligence of the

law under Title 42 U.S.C. 1986 that they were violating petitioner's constitutional rights which they had knowledge thru constructive notice. In the files of MSHA and the Secretary of Labor you will find the issue of Law un-resolved. The inspector general U.S. Department of Labor had knowledge of the events through copies made to agents. The inspector general fired the agent/mine inspector, who admitted he had no jurisdiction at the site because there were no mines at the magazine site and the sheriff could have inspected the magazine, which Petitioner had informed the sheriff he didn't need to bring MSHA. It was deemed a legal storage by the MSHA inspector and the sheriff concurred. The sheriff broke local state law by not issuing the permit within 14 days as required under H&S 12,105.1. I finally got my permit after being deprived of my liberty for 147 days in an act of false imprisonment or false arrest and felonies mentioned above. I severed MSHA several other papers in the form of affidavits, which were un-rebutted to determine the nature and cause of their actions and a Tort Claim with an engineers report. Having made 5 presentments for damages as a result of their un-ethical behavior and due process violations, under the policy of TACIT PROCURARION, I filed an administrative

judgment/ Summary Judgment against MSHA and recorded said judgment in county records, which became law in 30 days as a matter of public policy, and attached it to my petition case No. 01-00443 RCL in the district court for the district of Columbia for judicial review. Somehow, I feel the U.S. Attorney is the judge, after two years in court they have admitted nothing. Although through a private administrative process, through an affidavit of negative averment Ms. Zane dba. United States Attorney and Representative for MSHA through a negative affidavit became a stipulation agreement of the facts which I witnessed did not exist- therefore, there were no facts in controversy without a response by Defendant(s). The U.S. Attorney stipulated to facts which incriminates the Department of Labor in the case through a certificate notarial protest, a third party, an officer of the court witnessing due process violations of the U.S. Department of Labor and their agents; the un-rebutted affidavit of negative averment now stipulations in the case. The complaint to the United States Court of Federal Claims was written as a negative affidavit. Again Petitioner's negative affidavit became a stipulation agreement of the facts which I witnessed did not exist- therefore, there were no facts in controversy without a response by Defendant(s). Defendant(s), Respondents refused to rebut the negative affidavit and robotically filed a

motion to dismiss, admitting facts key for the judge to decide in favor of Petitioner, but Judge Hewitt refused to grant petitioner judgment when the facts of the case were set in stone fatal to MSHA's criminal behavior. Petitioner filed a summary judgment before Defendant(s) motion to dismiss and summary judgment was never heard because of prejudice of Judge Hewitt favoring the U.S Attorney, saying the summary judgment was moot because she granted the motion to dismiss for the defendant(s), even though it should have been heard before Respondents motion to dismiss. Further, Judge Hewitt opinion was not supported by the facts, evidence or affidavits, outrageously, tried to say MSHA was not involved. The appeal before the United States Court of Appeal for the Federal Circuit was a sham because it was non-responsive to key questions in Appellant reply brief specifically involving the authority of MSHA. Without Respondents authority to come against petitioner there was no effectuation of a substantial federal purpose and the physical invasion by MSHA by the unreasonable abuse of police power by depriving plaintiff of his explosives/a defacto ban of mining and livelihood rights caused a takings without just compensation. The Obstacle created by MSHA goes against the congressional intent of congress which permits and encourages mining. None of the lower courts would address the kernel core issue of the case

i.e. the authority for MSHA to move against petitioner and now ask the Supreme Court to define authority for MSHA to come against Petitioner. MSHA moved forward on their conclusion law rather than a legal determination or a valid court process. Petitioner filed for rehearing and filed a Writ of Mandate with a Writ of Precipe directed to the Clerk of Court of Appeal for the Federal Circuit to File said Writ of Mandate. As part of the Appeal the Appeals court failed to uphold Petitioner's fundamental right to Petition the Department of Labor and the Mine Safety and Health Administration, Petitioner's Right to Mine, Petitioner's vested property rights, Petitioners fourth amendment protected right and failed to give equal protection of the law. The clerk refused to File the Writ of Mandate, which was technically correct, directed to the Chief Judge, the clerk ignoring the Writ of Precipe. The Writ of Mandate ordered the three judge Panel to uphold fundamental rights that the Appeals Court should have upheld but did not. Petitioner filed with the Supreme Court under Rule 22 Justice Roberts, however, the correspondence was lost, according to the clerks. Will silence by the Department of Labor; MSHA be shield, the court ratifying due process violations of an un-accountable agency who answers to no-one for the torturous acts of its key officials and unbridled field agents? Or on the other had will silence be a sword, the

petitioner having satisfaction and accord on the contract by the agency agreement by their silence and thru their admissions in the public record found as part of the petition filed with the district court and now by stipulations of Attorney Zane in a private administrative proceeding, representing DoL and MSHA, the court taking notice of these documents and ruling in favor of plaintiff holding the above mentioned agency accountable for violations of secured liberties, mining right, livelihood and a takings without just compensation for an invasion of a long standing exploration mining venture, which had defined targets of investment backed expectation, the project irreversibly damaged by the participation of DoL/MSHA thru their torturous acts driving him from his mine property losing 20 % of his life and livelihood.

REASONS FOR GRANTING

THE PETITON

Separation of Powers

i. it is paramount and mandatory that the government be transparent. When I learned of the thwarted surprise attack by MSHA, I had the right to know the nature and cause of their involvement, having years of experience in the mining business, I could be fined out of existence and the nine years of work lost because the Mine Safety and Health Administration as a policy and custom of said agency destroys small mines. When given a bill of Particulars they had the duty to respond, but remained silent. When I served the Secretary of Labor, Undersecretaries and local field agents of MSHA an issue of Law, they had the Duty to resolve the issue before moving against Petitioner. With the service of process was a memorandum of law, which informed the secretary of labor, giving her Title 42 U.S.C 1986 knowledge of felonies that would be committed in her name, if said agency proceeded against Petitioner. MSHA ignored the Petition/Affidavits committing crimes where the penalty is spelled out in Title 18 U.S.C 242 in the attached memorandum of law. Without resolution of the issue of law: whether my right to mine depended

on the permission of MSHA for its existence or my conclusion of law: that I had the state and federal constitution and my right to mine was unassailable and unrebuttable because the mining was on a patented mining claim where the rights go back to the date of location. That Petitioner was mining for the highest and best use Congress intended. Laws which prohibit the Lawful use of the sovereign property, which the supreme sovereign permits and encourages is violative of the Supremacy Clause Article VI Section II. SD Mining Assoc. v Jack Cole, nhttp://laws. Find law. co/8th/973861p.html By MSHA failing to resolve the issue of law they clearly had knowledge, making a legal determination, acting judicially being clothed as an executive agency in an organized enterprise with the sheriff, making the annual explosive permit contingent upon inspection of the mine as an act of EXTORTION, MSHA was clearly without AUTHORITY or fourth amendment warrant. Further in violation of the SEPARATION OF POWERS. The lower courts upheld the scheme of MSHA failure to be responsive, allowing the silence to defeat petitioner and condoned the due process violations of MSHA, which not only was in violation of the

SEPARTATION OF POWERS but clearly violated my right to petition under the First Amendment of the united States Constitution. While the Court of Appeal for the Federal Circuit said Petitioner(s) case is not citable as precedent, by their decision have caused irreparable harm to to the people of the united States ie. any one unfortunate enough to have to deal with corrupt-sinister, MSHA, The Court of Appeal for the Federal Circuit has hurt the people, making a blue print for MSHA to defeat all future comers who might have a dispute with MSHA. MSHA can ignore all valid challenges and remain unaccountable short of murder, and just remain silent and that corrupted scheme will be upheld by the lower courts as a valid exercise of absolute police power. People can be ruined and a large portion of their lives work rendered nullity and the Court of Appeal for the Federal Circuit will uphold the due process injustice. There must be no Judicial Branch or Article III court exercising judicial function, because if the paperwork in Exhibit A, timely served upon MSHA, isn't a large enough issue for the court to decide involving the

separation of powers; the nuts and bolts of the constitution; the frame work and corner stone of the republic, then Petitioner has been deceived that there is a judicial branch of government. The Court of Appeal for the Federal Circuit having the power/jurisdiction to decide and refusal to do so, have denied petitioner his first amendment right to Petition and be heard and Equal protection of the law: rights inviolate! The taking of Petitioner's Mining right is equally a crime without a notice, discovery and hearing. MSHA had no authority, there was no reason for the Magazine to Meet Federal Standards because Appellant was an intrastate user of explosives. It was a fraud FRCP rule 9(b) for the Court Of Claims in the opinion to use it as a ruse to justify MSHA's action. MSHA's jurisdiction is in Washington D.C. and enclaves and territories Title 4 USC 72. Not the Several states. The rights to the Patented claim go back to the date of location. Congress refused to accept liability on Patented Claims and didn't withhold a reservation for health and safety. MSHA is barred from regulation of Appellant's patented claim; covenants encumbrances and restriction not within the reservations are barred. Reservations cannot be added on or taken off. The rights on patented claims are preserved 43 CFR 3714.3. Appellant had no UCC- 3-501 contract with MSHA. No

mine ID number. There was No compelling Federal Interest, no exigent circumstances, No threat to the publics Health, Safety, Morals and welfare for MSHA to be involved. MSHA's extortion plot in the organized enterprise with the Sheriff contributed to the suspension of Appellant's inherent rights. There was no effectuation of a substantial federal purpose, yet participation by MSHA without a valid court process that through violation of the First, the Forth, due process clause of the Fifth of the united States Constitution, the supremacy clause, a sixth amendment and 14th amendment claim has caused a permanent taking without just compensation also in violation of the fifth amendment of the United States Constitution. For MSHA to engage in an organized enterprise to withhold explosives for 147 days for a job that took twenty minutes is an unreasonable abuse of police power.

" The legislative effort at regulation, within the police power, is not subject to condemnation strictly speaking, because it is unreasonable but because it impairs or destroys some inherent right, instead of preserving it. With respect to inherent rights, all which conserves is reasonable, that which impairs or destroys is unreasonable" Mehols v Milwaukee 156 Wis 591

2. Unless the decision of the lower courts is reversed the People have no right to petition their government because I have been denied the right to Petitioner under the First Amendment of the united States Constitution. There is no further need for The Judicial Branch of Government because the Police Power of the Executive Branch of government has been decided absolute by the lower courts. The Bill of Rights suspended.

Right to Mine

2. As a gold miner Petitioner has the right to mine. U.S v Etcheverrey 230 2nd At 193. In the Pennsylvania Coal Co. v Mahon. The Court observed that "[f]or practical purposes, the right to coal consists in the Right To Mine," and that the statute, by making it "commercially impracticable to mine certain coal," had essentially "the same effect for constitutional purposes as appropriating or destroying it. 260 U.S. 414. Like in Mahon to deny me the right to explosives, with no compelling federal Interest or eminent danger in absence of criminal activity for 147 days for a job that took 20 minutes is totally unreasonable. During the many years petitioner worked his mine, without

employees, choosing to remain small until sufficient ore could be developed that could withstand the regulation of MSHA where employees could possibly be hired. Petitioner had completed over 3000 feet of drifts and crosscut tunnels as well as 600 feet of shaft and raises and shipped small amounts of ore to the smelter. For MSHA to tie me up, usurp jurisdiction and deny the right to mine for any length of time for constitutional purposes acting judicially as an executive agency to deprive Petitioner of explosives for which there was a clear legal right and vested upon continual and approved use on a patented claim for the highest and best us congress intended was the will of intent to destroy the mineral content within the patented claim boundaries of petitioner's exploration operation causing a takings without just compensation. The action by MSHA was outrageous and actions by MSHA amounted to a Physical Invasion/occupation/obstacle that constituted an essentially de facto ban of Appellants mining right because he was deprived of explosives to continue his operation without due process of law for the highest and best use which Congress intended, which congress permits and encourages. MSHA, the Secretary of Labor had full knowledge of a tumult by service of process prior the invasion. As a Right. Petitioner's

mining right could not be taken away for any amount of time without due process of law.

Fourth Amendment

3. The agent of MSHA being a federal agent for the Mine Inspector to Accompany a State official of a State Search a fourth amendment Warrant from the Federal Court was a requirement for the Federal Official to Accompany the state official according to Byers v US. 273 U.S. 28 (1927) Since Petitioner was an exploration with no employees according to Marshall v Waite 628 F. 2nd 1255 (1980) a fourth amendment Warrant was also a requirement for MSHA to participate in the invasion of petitioner's patented mining claim.

Takings

4. The lower courts never dwelled into where MSHA ever got authority to join the sheriff in an organized enterprise with the sheriff that denied me fundamental liberties because petitioner was an intrastate user of explosives. The memorandum of understanding between MSHA and the ATF did not apply because

petitioner was not a licensee or permittee of ATF. The U.S. Department of Justice said there was no Federal Jurisdiction on the property. Without a substantial federal purpose, MSHA's participation which caused a defacto ban on mining because of lack of explosives by their physical invasion caused a takings. First English held that a taking occurs when the government deprives an owner the use of his property, even temporarily. See 482 U.S. at 318 (" '[T]emporay takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings, for which the Constitution clearly requires compensation." The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property. In general (at least with regard to permanent invasions), no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation. For example, in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), we determined that New York's law requiring landlords to allow television cable companies to emplace cable facilities in their

apartment buildings constituted a taking, id., at 435-440, even though the facilities occupied, at most, only 1 1/2 cubic feet of the landlords' property. The action by MSHA caused a permanent loss of 10 years of work and the mine property.

Writ of Praecipe

5. After the Court of Appeal of the Federal Circuit Affirmed the decision of the United States Court of Federal Claims Petitioner felt cheated by the court decision because the court knew that MSHA violated Petitoner's fundamental liberties. Since the Court would not uphold the rights of petitioner Mandate was appropriate to enforce rights unalienable and filed a petition as a new action as a Writ of Mandate in the court of appeal for the Federal Circuit directed at the Chief Judge to order his staff to uphold the rights petitioner. The clerk refused to file the petition even though petitioner praeciped the clerk to file the Writ of Mandate. The clerk denied petitioner access to the court because a praecipe is a command from the sovereign to do her ministerial duty to file the

petition for Writ of Mandate, However shrunk from her duty to perform the duty of the clerk.

Explosives, a tool of the miner

6. This case was before September 11, 2001. Based on the decision to the lower courts regarding petitioner's case of total rejection of the separation of powers doctrine because petitioner needs explosives in my work does not suspend my right to mine, my right to petition, my livelihood right, my property right, my fourth amendment right and can't deny me equal protection of the law, contrary what the three judge panel thinks in the court of Appeal for the Federal Circuit who routinely review cases involving administrative agencies and know, if said agency actions violate fundamental liberties of claimants. The three judge panel having knowledge of petitioners memorandum of law as follows of felonies committed in the name of the Secretary of Labor: Any who take upon them to make a legal determination on this issue of law, so that they may press forward on a fact issue in a legislative tribunal, would be proceeding under color of law on fact issues which may establish a legislative jurisdiction over the Accused,

which does not presently exist yet, to secure the agency/ forum/ tribunal/court's existence would be an action under pretended law or color of law to deprive the Accused citizen of rights protected by the Constitution of the United States, a clear violation of Title 18, U.S.C. Section 242, where the penalty is spelled out. If there was such an act done under color of law, that act would be a second felony resulting for the first felony; the first felony being where the legislature or executive agency or person has impersonated a judge at law which offense is against the United States and the separation of powers doctrine, the very foundation- stone of the republic. The courts willful failure to ignore the above a favor authority over the rights of the individual is reversible error. *This court has been zealous to protect these [confrontation] rights from erosion.* It has spoken OUT NOT ONLY IN CRIMINAL CASES, e.g. Mattox v United States, 156 U.S. 237, 242-244; Kirby v United States 174 U.S. 47; Motes v United States, 178 U.S. 458, 474; in re Oliver 333 U.S. 257, 273, <u>but also in ALL TYPES OF CASES where administrative and regulatory action were under scrutiny</u>, e.g. Southern R. Co. v. Virginia, 290 U.S. 190; Ohio Bell Telephone Co. v Public Utilities Commission, 301 U.S. 292; Morgan v United States, 304 U.S. 1, 19; Carter v Kubler, 320 U.S.

243; Reilly v Pinkus, 338 U.S. 269.' Green v McElroy, 360 U.S. 474, 496-497 (1959) (emphasis mine). If the Judges don't enforce fundamental rights. Then there are none for petitioner or the people of united States.

CONCLUSION

The separation of powers argument is a valid principle of law, which the petitioner can serve upon the secretary of labor and be on an equal footing with MSHA and the Department of Labor regardless of the disabilities of the lower court judges, who have ignored the frame work of the constitution. Like Robert Bork writes: " There is a Constitution with a historical meaning and anyone may use that meaning for his defense no matter how many elections have gone against him." Like ATF, The Mine Safety and Health Administration should have declined to participate in an evil scheme with the Sheriff to cause Petitioner irreversible Harm by making a simple explosive permit, which petitioner had been getting annually and had a clear legal right for said permit, contingent upon inspection of the mine in an act of

extortion, MSHA then could either resolve the issue of law presented to the Secretary of Labor and undersecretaries in an Article III court exercising judicial function or obtain a fourth amendment warrant or a valid court process before coming against Petitioner. MSHA represented an unreasonable abuse of police power, they applied willfully with knowledge thru constructive notice and memorandum of law timely served prior to their invasion, a violation of vested property, livelihood, mining and liberty right to cause Petitioner to be without explosives for 147 days/ a defacto ban of mining/Obstacle in violation of the Supremacy Clause because it goes against the congressional intent of congress, taking all use of the patented claim for a job that took twenty minutes in defiance of the Congressional Intent which permits and encourages mining. By MSHA's action and violations of due process of law by remaining silent when there was an obligation to speak, the findings in the lower Courts should be reversed to discourage the agencies unlawful behavior with regard to other people who might be unfortunate enough to deal

with MSHA. The court should take notice that some of the inspectors have been murdered. Government must be transparent. The threat posed by the accumulation of power in one branch of government, an evil well known to the founders, is a guiding principle behind the constitution. In support of ratification, Alexander Hamilton quoted from Montesqieu: "there is no liberty, if the power of judging be not separated from legislative and executive powers." The Federalist No. 78. That the court had the duty to study the administrative process which preceded the court case and had the duty recognize the failed legal duty and obligation of MSHA to be responsive to Plaintiff, which cannot be equated with good faith and fairness. The punishment for MSHA's violation of Plaintiff's administrative inquiries for being non-responsive is to strike the Respondents pleadings. That Respondents motion to dismiss in the Court of Federal Claims is moot for the non-responsiveness in the administrative process. Respondents denial of the administrative Process violates petitioenr's right to petition under the first amendment. The above was the contract which was to be reviewed in the Court of Claims as the first

amended complaint, which petitioner had full satisfaction and accord on the contract by MSHA's silence through the legal theory of Tacit Procuration. MSHA jurisdiction is Title 4 USC 72, not the several states and had no right to regulate plaintiff 's patented claim; pre-established rights and rights going back to date of location. It was the will of intent to destroy plaintiff's mine making a simple explosive permit contingent upon inspection of the mine by MSHA and the Sheriff in the act of extortion Cal Penal Code 519. Cal OSHA the California equivalent was not consulted because they have no power to fine Petitioner. That MSHA was served constructive notice they were violating my rights and ignored an issue of law in the file of said agency that remains unresolved, which MSHA had knowledge of the consequences, if they moved forward against Petitioner by a memorandum of law. MSHA acted judicially when clothed as an executive agency in violation of the separation of powers because only an Article III Court exercising judicial function can make a legal determination upon two constitutional conclusions of law. That MSHA is a corrupt, sinister racketeering influenced crime organization which as a policy and custom destroys small mines. That MSHA had no right to conspire with the sheriff to deny Plaintiff's mining right without first giving notice, discovery, and hearing. Plaintiff's rights were vested and had been receiving permits annually for nine years prior to the physical

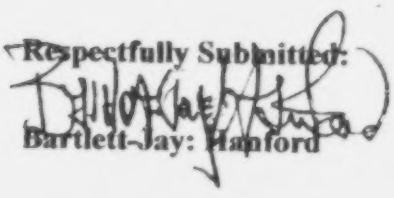
invasion. When MSHA showed up at the magazine it cemented Plaintiff's case against MSHA after being informed by a memorandum of law nearly two months earlier. Without a clear showing of a compelling federal interest, eminent danger, exigent circumstances, threat to the publics health safety morals and welfare, MSHA's participation in the conspiracy to deny me my mining right and fundamental liberties constitutes an *unreasonable* interference under the guise of an exercise of the police power. Petitioner had no contract with MSHA to inspect Plaintiff's magazine or mine; Petitioner had no mine MSHA ID number; Petitioiner gave no permission for MSHA to inspect the mine. The memorandum of understanding between MSHA and ATF giving MSHA authority didn't apply to Petitioner and by the Department of Justice Land and environment own writings; "there was no federal Jurisdiction on the subject property." The only contract is the showing of dishonor and violation of fundamental liberties; mining right by MSHA ; the administrative process, the contract for adjudication in the first amended complaint before the Court of Claims and The Court of Appeal for the Federal Circuit. The Plaintiff having full satisfaction and accord on the contract or

judgment in estoppel, the Respondents not wishing to litigate further and in agreement on the terms of contract by their silence through Tacit Procuration for participation with the Sheriff in an organized enterprise to deny Plaintiff explosives (tools) necessary for the operation of his project. Having worked in mining/heavy construction for over 39 years, knowing MSHA destroys small mines through impossible regulation and inspectors derived from the bottom of barrel of mine industrial labor pool. MSHA has literally inspected them selves out of business and have been reduced to gravel pit inspectors driving the mining industry to foreign countries to escape their wrath leaving no underground mines to inspect. For, the very idea that man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." Yick Wo v Hopkins 118 U.S. 356, 370.

The Writ of Certiorari Should be granted.

Dated: May 20, 2006

Respectfully Submitted:



Bartlett-Jay: Hanford

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

(2)

CASE NO. _____

In The

Supreme Court of the United States

Bartlett- Jay Hanford, Petitioner

v.

Mine Safety and Health Administration,

Respondent(s)

On Petition For Writ of Certiorari

United States Court of Appeal for the

Federal Circuit

Washington D. C. 20439

PETITION FOR WRIT OF CERTIORARI
PETITIONER'S APPENDIX

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In The United States Court
of Federal Claims
No. 04-504 L

BARTLETT J. HANFORD

V

Judgment Filed
NOV 2, 2004

THE UNITED STATES

Pursuant to the court's opinion and order, filed November 23, 2004,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint as to his claim for a Fifth Amendment taking is dismissed with prejudice, and the balance of plaintiffs complaint is dismissed without prejudice. No costs.

Brian Bishop

November 23, 2004 **Clerk of Court**

United States Court of Federal Claims

No. 04-504L

(Filed November 23, 2004)

BARTLETT HANFORD)

Plaintiff,) Motion to Dismiss; RCFC 12(b)(1); RCFC 12(b)(6); Temporary Takings Claim; Sovereign Immunity

THE UNITED STATES)

Defendant.)

Bartlett J. Hanford, San Andreas, CA, pro se.

Kathleen Lennon, with whom was Thomas L. Sansonetti, Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, for defendant.

OPINION & ORDER

HEWITT, Judge

Before the court are Plaintiff's Motion for Summary Judgment (Pl.'s Mot.) and Defendant's Motion to Dismiss (Def.'s Mot.). Plaintiff has moved for summary judgment on numerous theories of recovery for a 147-day delay in the issuance of a California permit to maintain an explosives magazine on his property. Defendant has moved to dismiss plaintiff's complaint for failure to state a claim upon which relief can be

granted, see Rules of the Court of Federal Claims (RCFC) 12(b)(6), and/or for lack of subject matter jurisdiction, see RCFC 12(b)(1). Because subject matter jurisdiction is a "threshold matter" that must be addressed before the court reaches the merits of plaintiff's claim, the court considers defendant's motion under RCFC 12(b)(1) first. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998); see also Nippon Steel Corp. v. United States, 219 F.3d 1348, 1352 (Fed. Cir. 2000).

For the following reasons, defendant's motion to dismiss is GRANTED and plaintiffs motion for summary judgment is rendered MOOT.

I. Background

A. Plaintiffs Application for a Local Mining Permit'

Plaintiff Bartlett J. Hanford is a "mining engineer" who claims to have owned a "patented mining claim" in California for more than ten years. Complaint (Compl.) at i. In January 1999, plaintiff applied to the Calaveras County, California, Sheriff s Department for a permit to maintain an explosives magazine on his property. Id. at 1, 23; Def.'s Mot. at 2; see also Cal. Health & Safety Code § 12101(a)(3) (West 2003) ("No person shall [receive, store or possess explosives] without first having made application for and received a permit in accordance with this section."). California law required the Sheriff's Department to "inspect and approve the [explosives] storage facility" located on

plaintiffs property before issuing a permit, to ensure the facility's "strict compliance with the regulations adopted by the State Fire Marshal." § 12105; see also § 12107 (granting the Sheriff "reasonable discretion" to "deny a permit to any person if it is his opinion that the handling or use of explosives by such person would be hazardous to property or dangerous to any person").

Because "[t]he preliminary information [in plaintiffs application] indicated that Mr. Hanford operated a mine," Compl. Ex. 9A (Letter from J. Davitt McAteer, Assistant Secretary, Mine Safety and Health Administration, to Hon. John T. Doolittle, U.S. House of Representatives of May 26, 1999 (McAteer Letter), at 1); Def.'s Mot. Ex. 1 (same), the Sheriff believed that plaintiffs property "might be subject to regulation by [the Mine Safety and Health Administration (MSHA)]." Id. Accordingly, "[beefore granting the permit, the sheriffs department wanted to be assured Mr. Hanford met Federal explosives storage requirements," and an MSHA inspector was "asked to accompany the sheriff s deputy when he went on site."[2] Id. The parties agree that "[t]he County Sheriff refused to grant [p]laintiff a permit unless he inspected the magazine with MSHA." Def.'s Mot. at 3.

---

[1]Facts cited to the filings of only one party do not appear to be disputed in connection with the pending motions.

[2]MSHA, through a Memorandum of Understanding with the Bureau of Alcohol, Tobacco, and Firearms (ATF), has authority to inspect explosives magazines on mine properties on behalf of the ATF. See 45 Fed. Reg. 25,664-65 (Apr. 15, 1980).

Plaintiffs complaint indicates that the Sheriff sought to harm plaintiff by delaying and/or complicating the permitting process. Compl. at 24 ("I told Officer Ross [from the Sheriffs Department] ... there would be no need for MSHA. Officer Ross stated: "MSHA was coming to the mine whether I liked it or not[.]"); see also id. at 23 ("The inspection process ... was cancelled three times [between January and February 1999] and [O]fficer Ross [from the sheriffs department] knew I needed my permit renewed because I was out of explosives."); id. at 25 ("Still no inspection of magazine by sheriff. Had my [a]ttorney [c]all Sheriff. Sheriff Downum did not return calls."); id. at 26 ("Hanford asked Officer Ross whether this was personal."); id. at 27 ("Officer Ross was upset because he could not get MSHA to act. He said he will be back [and] I construed [f]or the purpose of harming me.... Officer Ross [w]anted in the worst way to harm me."). Plaintiff further alleges that "MSHA ... form[ed] an organized enterprise with the sheriff for the purpose of making the explosives permit contingent upon inspection of the mine." Id. at 8; see also Pl.'s Opp'n of Mot. to Dismiss (Pl.'s Opp'n) at 1 (accusing "Deputy Ross of the Sheriffs Department and Mr. Davis of MHSA" of conspiracy, racketeering and extortion). Plaintiff disagreed with the Sheriffs determination that MSHA's involvement in the inspection was necessary, and plaintiff refused to allow an MSHA representative to visit or examine plaintiffs explosives storage facility. Plaintiff stated that "MSHA destroys small mines, because the cost of their regulation often exceeds the annual cost of operating the mine." Pl.'s Mot. at 11. Therefore, plaintiff sought "to protect [him]self from any jurisdiction MSHA may have." Id.

It appears that plaintiff believed that relocating his explosives magazine away from his mine would defeat MSHA's jurisdiction. Accordingly, plaintiff refused to cooperate with MSHA during a meeting and site visit on April 13, 1999:

> [On April 13, 1999,] [t]he MSHA supervisor and the Calaveras County deputy met with Mr. Hanford in the Sierra Nevada Mountains where Mr. Hanford had moved his explosives magazine, but not where he conducts his business. Mr. Hanford declined to discuss his activities with the supervisor and would not show him the [mining] work site.

McAteer Letter at 1; Compl. at 26-27 (describing plaintiffs relocation of his explosives magazine, the inspection of plaintiffs magazine, and plaintiffs refusal to discuss his mining activities). At the April 13, 1999 meeting, a sheriffs deputy inspected Plaintiff's explosives magazine.[3] Compl. at 26 ("[Deputy] Ross said to make the improvements, photograph them, and submit them back for approval. If it appeared satisfactory[,] a permit would be issued.").

Plaintiff alleges that, at the April 13, 1999 meeting, "Willie Davis of MSHA made a jurisdictional statement claiming he had jurisdiction over all mines." Id. Plaintiff further alleges that, through this statement, Mr. Davis "violat[ed] the separation of powers doctrine, ma[de] a legal determination ... [and] impersonat[ed] a judge[,] causing Plaintiff a deprivation of rights under the color of law." Id. at 9. However, plaintiff also admits that Mr. Davis clarified the limits of MSHA's jurisdiction by explaining that "if there were no mines [where plaintiff had moved his explosives magazine] ... [t]he Sheriff could inspect the magazine," and MSHA would not have jurisdiction. Id. at 26.

MSHA [was neither] able to obtain a definitive description of Mr. Hanford's activities" nor permitted to inspect plaintiff's work site; therefore, MSHA could not "make a determination on [its] jurisdiction." McAteer Letter at 2. Because he could not "resolve whether MSHA ha[d] jurisdiction over [plaintiffs] activities," the MSHA official never inspected plaintiff's work site. Id.; Compl. at 26 ("Inspector Davis from MSHA asked consent to look around. I denied him that right.... Davis said he would decline forcible entry at [t]his time."); id. Ex. 9B (Letter from Earnest C. Teaster, Jr., Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, to plaintiff of Aug. 25, 1999) ("[B]ased on our unsuccessful attempts to locate your place of business and your reluctance to discuss your activities, we cannot determine whether or not we have jurisdiction. I urge you to contact MSHA's Western District office with more information concerning your operation so that we can make a determination whether MSHA has jurisdiction.")

"Although required to do so, Plaintiff has never notified MSHA that he was engaged in mining activities." Def.'s Mot. at 4 (citing Notification of Commencement of Operations and Closing of Mines, 30 C.F.R § 57.1000 (1995)). Despite the unresolved state of his relations with MSHA, plaintiff nevertheless received his local explosives permit on April 21, 1999-147 days after he applied for the permit, and eight days after the sheriff's deputy inspected the explosives magazine. See Compl. at 27.

B. Plaintiffs Federal Tort Claims Act (FTCA) and District Court Claims

[3]It is not clear from plaintiffs complaint whether the MSHA inspector participated in the inspection of plaintiffs explosives magazine.

On June 8, 2000, plaintiff filed an FTCA administrative claim form (SF-95) seeking $2,454,121 in damages from MSHA. Compl. Ex. 22; Def.'s Mot. Ex. 2. As a basis for his claim, plaintiff alleged that the MSHA agent fraudulently "claimed jurisdiction over [plaintiffs] patented mining claim ... when no such jurisdiction or venue existed," Compl. Ex. 22, at 1, and that the MSHA agent "caused a taking of private property in[] conspiracy with [the] local Sheriff denying Hanford the right for a liv[e]lihood, a mining right, and inalienable rights protected by the Federal Constitution[,] resulting in the loss of production." Id.; cf Compl. Ex. 23 (Letter from plaintiff to Paula V. Parrott, Paralegal Specialist, U.S. Dep't of Labor, of April 17, 2000), at 1 ("The [U]nited States is actionable because they had no authority for interfer[ing] with [plaintiffs mining] operation and tried to gain jurisdiction through the sheriff. When the sheriff had the power."). Plaintiff's claim was denied by the Department of Labor on August 16, 2001. Def.'s Mot. at 5.

In February 2001, plaintiff filed a complaint "alleging claims similar to [his] FTCA claim" in the United States District Court for the District of Columbia. Id. Plaintiffs district court complaint was dismissed for lack of jurisdiction, Compl. App. A (District Ct. Op. and Order), and his subsequent appeal to the United States Court of Appeals for the District of Columbia Circuit was dismissed as untimely. Id. App. B.

C Plaintiffs "Administrative Judgment".

While his FTCA claim was pending, plaintiff recorded a document titled "Administrative Judgment" with the Recorder's Office in

Washington County, Utah. See Compl. Ex. 19; Def.'s Mot. Ex. 3. Although this document was recorded in Utah on November 30, 2000,

Compl. Ex. 19 at 2, it appears to have been signed in California on November 9, 2000. Id. at 6. Plaintiff alleges that the "Administrative Judgment" was "rendered by a court of competent jurisdiction," Pl.'s Mot. at 6, but the face of the document does not identify a court or administrative tribunal. Rather, the document was signed by an "Administrative Hearing Officer" in Calaveras County, California. Compl. Ex. 19. at 6. The "Administrative Judgment" finds MSHA liable to plaintiff for $2,454,121 in damages stemming from its agent's conduct during the inspection of plaintiffs explosives magazine. Id.

Plaintiff's "Administrative Judgment" consists of a document styled as a "Verified Declaration ... [made] under the penalty of perjury pursuant to the law ... of California" by Darrell H. Brandon. Id. at 2. Mr. Brandon's declaration is divided into three sections: (1) "Finding[s] of Fact," id. at 2-3; (2) "Conclusion[s] of Law," id. at 3-4; and (3) "Admitted Answers to Inquir[i]es," id. at 4-6, in which Mr. Brandon appears to consent to suit, and to admit culpability, on behalf of MSHA. In addition to serving as a declarant in this matter, Mr. Brandon also appears in the "Administrative Judgment" as the "Administrative Hearing Officer" who entered judgment against MSHA. Id. Defendant states that it "is unaware of the identi[t]y of Darrell Brandon." Def.'s Mot. at 6 n.5

Plaintiff claims that the "Administrative Judgment" was rendered by a "third party judging the actions

of MSHA." Compl. at 19-20. The court notes, however, that several statements in Mr. Brandon's declaration appear to have been authored by plaintiff, rather than a third party. See. e.g., Compl. Ex. 19 at 1, ¶ 1 ("The [MSHA] employees ... were put on notice ... [that] if they [mooved forward against me. Hanford, without resolving an issue of law, they would be committing felonies ....") (emphasis added); id. at 1, ¶ 2 ("Upon service[,] each of the above [MSHA] employees had Title 42 U.S.C. 1986 knowledge of violations and thr[ough] their agent Davis moved forward against me without resolution of an issue of law.") (emphasis added); id. at 1, ¶ 4 ("On April 13, 1999 MSHA moved forward against me, Hanford[.1 thr[oughl their agent Mr. Davis and became culpable for loss of liberty, livlihood and mining right, confirming the takings issue, ignoring the issue of law[,] committing felonies, impersonating a judge, deprivation of rights under the color of law, and conspiracy....") (emphasis added).

Defendant, not without cause, views the "Administrative Judgment" as a fabrication. Def.'s Mot. at 6 ("Plaintiff went so far as to draft what he calls an `Administrative Judgment.' The `Administrative Judgment' is an act of fiction .... [I]t is not a legal judgment."). The record indicates that defendant neither participated in nor responded to any proceeding resulting in plaintiffs "Administrative Judgment." See Pl.'s Opp'n at 8, 176. Plaintiff argues that defendant's lack of participation is evidence of defendant's assent to the terms of the "Administrative Judgment." Id. at 7-8, 1176-77 (noting that "MSHA silently agreed with Plaintiff's position" and "refused to controvert the claim for

damage[s]"). According to plaintiff, because defendant "[a]greed not to litigate further," Pl.'s Mot. at 5, the "Administrative Judgment" became "a final judgment rendered by a court of competent jurisdiction on the merits ... conclusive as to the rights of the parties and their privies," id. at 6, and that it "constitutes an absolute bar to a subsequent action," through the doctrines of res judicata and collateral estoppel. Id.

D. Plaintiffs Complaint in the United States Court of Federal Claims

Plaintiff filed his complaint in this court on March 29, 2004, alleging that MSHA acted in concert with the Calaveras County Sheriffs Department to violate plaintiffs rights under, inter alia, the (1) the Due Process Clause of the Fifth Amendment, Compl. at 12-13; see also id. at 2 (accusing MSHA of "engaging with the Sheriff to detain [him] of explosives, liberty, property and mining right essential to the operation of [his business]"); (2) the Takings Clause of the Fifth Amendment, id. at 14-15; see also id. at 27 ("I ... had to pursue other opportunities for 147 days ... causing a regulatory taking[]."); (3) the Fourth Amendment, id at 15-16; and (4) the "Supremacy Clause," U.S. Const. Art. VI. See Compl. at 17-18 In his complaint, plaintiff also argues that MSHA is bound by the "Administrative Judgment" described above, see Part I.C, supra, and alleges that the "administrative judgment was his summary judgment and became law as a matter of public policy by being entered into the court record for over 30 days." Compl. at 2. According to plaintiff, by "defendant(s) silently agreeing [with his Administrative Judgment] and by failing to litigate

further[,] Plaintiff had judgment [by] estoppel in the administrative process." Id.; see also id. at 18-20 (discussing plaintiff's claim for "Judgment by Estoppel"); Pl.'s Mot. at 6 (arguing that the doctrines of res judicata and collateral estoppel apply and entitle plaintiff to recovery). Plaintiff asks that "judgment be awarded ... in favor of Plaintiff... in the amount of $2,454,121 plus court cost[s] and interest [at a rate of] 12% per annum until paid." Compl. at 22, 13.

II. Discussion

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

1. Standard of Review

Rule 12(b)(1) of the Rules of the United States Court of Federal Claims governs dismissal of a claim for lack of subject matter jurisdiction. RCFC 12(b)(1). In ruling on a Rule 12(b)(1) motion to dismiss, the court is generally "obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff's favor." Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995) (citing Scheuer v. Rhodes, 416 U.S. 232, 236-37 (1974)). However, plaintiff, as the non-movingparty, bears the burden of establishing jurisdiction by a preponderance of the evidence. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988) ("[O]nce the [trial] court's subject matter jurisdiction was put in question it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court's jurisdiction.").

2. Jurisdiction of the United States Court of Federal Claims

The United States Court of Federal Claims is a court of "limited jurisdiction." United States v. King, 395 U.S. 1, 3 (1969). The Tucker Act, 28 U.S.C. § 1491 (2000), confers upon this court jurisdiction over certain claims against the United States; however, the Tucker Act does not create a substantive right enforceable against the sovereign. United States v. Testan, 424 U.S. 392, 398 (1976); Khan v. United States, 201 F.3d 1375, 1377 (Fed. Cir. 2000). Rather, a claimant must base his claim "either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1); see also Fisher v. United States, 364 F.3d 1372, 1377 (Fed. Cir. 2004) ("The Tucker Act itself does not create a substantive cause of action; in order to come within the jurisdictional reach and the waiver [of the Government's sovereign immunity] of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages.").

The general rule is that this court has jurisdiction over a case if a claimant makes a non-frivolous allegation that he is "entitled to money from the United States because a statute or regulation grants him that right," or because a contract or constitutional provision creates an equivalent right. Ralston Steel Corp. v. United States, 340 F.2d 663, 667 (Ct. Cl. 1965); see also Stephenson v. United States, 58 Fed. Cl. 186, 192 (2003) ("[W]e are not empowered by Congress to recognize `ee very claim [against the

United States] involving or invoking the Constitution, a federal statute, or a regulation.' Rather, [we] may only hear claims seeking primarily monetary relief against the United States government based upon 'money-mandating' provisions of the Constitution, acts of Congress, or executive regulations, to which the plaintiff alleges a specific entitlement." (quoting Eastport S.S. Corp. v. United States, 372 F.2d 1002, 1007 (Ct. Cl. 1967) (emphasis added) (footnote and citations omitted))).

The court "may not entertain claims outside this specific jurisdictional authority." Adams v. United States, 20 Cl. Ct. 132, 135 (1990). "If there is no jurisdiction, this court must dismiss the action." Taylor v. United States, 49 Fed. Cl. 598, 601 (2001). The court addresses each of plaintiff's claims in turn.

3. Analysis of Plaintiff's Constitutional Claims[4]

In his complaint, plaintiff first alleges that "MSHA's participation in an organized enterprise with the sheriff ... deni[ed] a mining right for 147 days for lack of notice, discovery and hearing or due process of law." Compl. at 13, ¶ 35. Plaintiff further alleges that "MSHA ... detain[ed] Plaintiff of his liberty, mining, property and livelihood

[4]The court notes that plaintiff's complaint also includes non-constitutional allegations, and accuses the MSHA inspector of extortion, Compl. at ii; conspiracy, id. at 10; impersonating a judge, id. at 10-11; violating plaintiffs civil rights under 42 U.S.C. § 1986 (2000); and slavery, Admin. J. at 5. None of these claims arises pursuant to a money-mandating statute; therefore, the court lacks jurisdiction over these claims.

Plaintiff's claims of false imprisonment and false arrest, Compl. at 6, sound in tort and also lie outside this court's jurisdiction. rights and by default violated Plaintiff's due process of law."[5] Id. at 13, 140. Both claims appear to allege a denial of plaintiff's rights under the Due Process Clause of the Fifth Amendment, and both claims must fail. "[This] court [does] not have jurisdiction over money claims that are based upon an alleged violation by the government of the due process clause ... because the due process clause does not obligate the government to pay money damages." Collins v. United States, 67 F.3d 284, 288 (Fed. Cir. 1995); see also Sumter v. United States, 61 Fed. Cl. 517, 524 (2004) ("[T]his court is not vested with jurisdiction under the Tucker Act, 28 U.S.C. § 1491, to hear [Fifth Amendment due process] claims. The Fifth Amendment, standing alone, without an underlying statutory or regulatory right to recover money damages, does not provide the necessary independent basis for jurisdiction in this court."). Nor does the court have jurisdiction over plaintiff's Fourth Amendment and Supremacy Clause claims. See Compl. at 15-18. "[V]iolations of 4th [A]mendment search and seizure" are "excluded" from the jurisdiction of this court because

the Fourth Amendment is not a money-mandating constitutional provision. Stephenson, 58 Fed. Cl. at 192. The court further notes that plaintiff's "Supremacy Clause" claim is more aptly characterized as a repackaging of his due process and Fourth Amendment claims. See Compl. at 18 166 ("I have seen nothing or has any material fact been presented which demonstrates that the participation of MSHA without a [F]ourth [A]mendment warrant or due process of law detaining plaintiff[] of his fundamental liberties and property was not an obstacle or a violation of the Supremacy Clause."). Accordingly, and for the reasons stated above, the court lacks jurisdiction over plaintiff's Supremacy Clause claim.

The court now turns to plaintiff's takings claim. Plaintiff alleges that MSHA and the local sheriff delayed plaintiff's explosives permit for 147 days by "making ... [the] explosive permit contingent upon [MSHA's] inspection of the mine." Compl. at 14, 147. Plaintiff further alleges that this delay harmed his mining business, see id. at 14, 146 ("I was ... injured by MSHA detaining me of liberty for lack of explosives needed to operate the exploration having reached a depth of 200 vertical feet, suffering a loss of investment backed expectations and the uncertainty that I would be allowed to return to work, being displaced and forced to seek a new drilling project."), and that this harm amounts to a compensable temporary taking, id. at 13, ¶ 35 (alleging that MSHA's "participation in the denial of a mining right for 147 days ... took Plaintiff's property/mining right."). As the United States Court of Appeals for the Federal Circuit recently noted, the test for determining whether a claim falls within

this court's subject matter jurisdiction is fairly "relaxed":

'Plaintiff also argues that MSHA's failure to respond to plaintiff s Administrative Judgment violated plaintiff's rights under the Sixth Amendment of the Constitution. Compl. at 13, 139. This claim, too, must fail for two reasons. First, the Sixth Amendment protects "the accused" and applies "[i]n all criminal prosecutions." U.S. Const. amend. VI. Plaintiff has not been accused of a crime, nor is this a criminal proceeding. Second, this court lacks jurisdiction over claims arising under the Sixth Amendment. See Milas v. United States, 42 Fed. Cl. 704, 710 (1999) ("[T]he Fifth and Sixth Amendments are not money mandating and, consequently, cannot combine with the Tucker Act to provide the court jurisdiction."), affd, 217 F.3d 854 (Fed. Cir. 1999).

[W]hen a Tucker Act plaintiff makes a non-frivolous allegation that a particular statute is reasonably amenable, with fair inferences drawn, to a reading that it mandates money damages, a basis for jurisdiction is stated.. . . If the showing meets the test, nothing more need be done to establish the trial court's jurisdiction.

Fisher, 364 F.3d 1372 at 1377-78. Here, it is well-established that "'a plaintiff may sue in the Court of Federal Claims on a takings claim.'" El-Shifa Pharm. Indus. Co. v. United States, 378 F.3d 1346, 1353 (Fed. Cir. 2004) (quoting Del-Rio Drilling Programs, Inc. v. United States, 146 F.3d 1358, 1363 (Fed. Cir. 1998); see also 28 U.S.C. § 1491 (2000); Testan, 424 U.S. at 398. This rule extends to both permanent and temporary takings. See BMR Gold Corp. v. United States, 41 Fed. Cl. 277, 282 (1998) ("[I]f the interference,

even if temporary, with plaintiff's property rights is substantial enough, it may rise to the level of a taking.").

Notwithstanding Fisher's "relaxed" test for subject matter jurisdiction, it is far from clear that plaintiff has filed a "well-pleaded, non-frivolous complaint" alleging a violation of the Takings Clause. Fisher, 364 F.3d at 1378. However, the court recognizes that allegations made in a pro se complaint are to be held to "less stringent standards than formal pleadings drafted by lawyers," Haines v. Kerner, 404 U.S. 519, 520 (1972), and therefore finds that it has jurisdiction over plaintiffs Takings Clause claim.

B. Motion to Dismiss for Failure to State a Claim

Although plaintiff has alleged a taking that falls within the court's jurisdiction, the court's inquiry does not end here. "[T]he question of a federal court's subject matter jurisdiction over a cause[is separate] from the question of what a plaintiff must prove in order to prevail in the cause." Fisher, 364 F.3d at 1376. With this in mind, the court now considers whether plaintiff's allegations of a temporary taking-"the denial of a mining right for 147 days," Compl. at 13, ¶ 35-"state a claim upon which relief can be granted." RCFC 12(b)(6).

1. Standard of Review

Under Rule 12(b)(6), the court must accept as true the facts alleged in the complaint, Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 633 (1999), and must construe all reasonable inferences in favor of the non-movant, Sommers Oil Co. v. United States, 241 F.3d 1375, 1378 (Fed. Cir. 2001). A court must grant the motion "when the facts asserted by the plaintiff do not entitle him to a remedy." Boyle v. United States, 200 F.3d 1369, 1372 (Fed. Cir. 2000). "Dismissal by this court under [Rule12(b)(6)] constitutes an adjudication on the merits of a claim." Crawford v. United States, 53 Fed. Cl. 191, 192 (2002). The court now considers whether the facts alleged in plaintiff's complaint state a valid and compensable temporary takings claim.

2. Analysis of Plaintiff's Takings Claim

In this case, plaintiffs complaint alleges the following facts: (1) plaintiff applied for a local explosives permit; (2) the Sheriff refused to issue that permit unless an MSHA inspector accompanied him to plaintiffs work site, see Cal. Health & Safety Code § 12101(c)(2) (permitting the Sheriff to make such a request); (3) an MSHA inspector accompanied the Sheriff to the site; (4) the MSHA inspector commented that MSHA "ha[s] jurisdiction over all mines," Compl. at 26, but did not enter or inspect plaintiff s mine; and (5) plaintiff's local permit was issued 147 days after his initial application. Plaintiff claims that these facts establish a temporary taking by MSHA. The court disagrees. After careful examination of plaintiff s

complaint, and drawing all reasonable inferences in plaintiffs favor, the court determines that plaintiff has failed to state a valid takings claim and, therefore, that the remainder of his complaint must be dismissed.

It is well established that the federal government cannot be held liable for actions by state or local government officials that allegedly result in a taking. See Shewfelt v. United States, 104 F.3d 1333, 1338 (Fed. Cir. 1997) ("[I]t was California and not the United States that took the action that resulted in the extinguishment of any interest that [plaintiff] may have had .... If [plaintiff] has any valid taking claim resulting from the extinguishment, it would be against California, and not against the United States."). Only where "the government involvement in the deprivation of private property is sufficiently direct and substantial" does a compensable taking occur. Nat'l Bd. of YMCAs v. United States, 395 U.S. 85, 93 (1969).

Here, plaintiff alleges that an MSHA inspector delayed the issuance of plaintiff s explosives permit and caused plaintiff's property to be taken for 147 days. See Compl. at 15, 149; Pl.'s Opp'n at 6, 149. However, the well-pleaded allegations in plaintiff s complaint indicate that the local Sheriff, rather than a federal actor, caused the delay. As plaintiff notes repeatedly, the local Sheriff refused to inspect plaintiff's explosives storage facility unless an MSHA official accompanied him to the site. Compl. at 24, ¶ 8 ("Officer Ross stated: 'MSHA was coming to the mine whether I liked it or not[.]'"); id. at 25, 116 ("[I] [a]sked about getting a Federal explosive

license because the Sheriff would not inspect my magazine."); id. at 27 ("Officer Ross was upset because he could not get MSHA to act. He said he will be back ... [f]or the purpose of harming me."); see also McAteer Letter at 1 ("Before granting the permit, the sheriffs department wanted to be assured Mr. Hanford met Federal explosives storage requirements ... [and MSHA was] asked to accompany the sheriffs deputy when he went on site.").

Plaintiff's complaint also makes clear that the MSHA inspector never entered or inspected plaintiffs mine. See Compl. at 26 ("Inspector Davis from MSHA asked consent to look around. I denied him that right. I did not [c]onsent to any right for MSHA to look around. Davis said he would decline forcible entry at [t]his time."); see also McAteer Letter at 1 ("Mr. Hanford declined to discuss his activities with the [MSHA] supervisor and would not show him the work site."). And plaintiff's complaint accuses the Sheriff of causing the delays in the permitting process. See Compl. at 6 (noting that the Sheriff "broke local state law by not issuing the permit within 14 days as required under [California law]"); id. at 27 (accusing the Sheriff of negligence under California law, and of "making a ruse that he needed MSHA to inspect the magazine"). It is far from clear whether the facts alleged in plaintiffs complaint establish that MSHA had any role in the delayed issuance of plaintifff s local explosives permit let alone the "sufficiently direct and substantial" role necessary to establish a taking under the Fifth Amendment. Nat'l Bd. of YMCAs, 395 U.S. at 93. Even if the 147-day delay in the issuance of plaintiff's permit could somehow be attributable to MSHA, a 147-day delay

is insufficient as a matter of law to constitute a temporary taking. "Delay in the regulatory process cannot give rise to takings liability unless the delay is extraordinary." Appolo Fuels, Inc. v. United States, 381 F.3d 1338, 1351 (Fed. Cir. 2004) (citing Boise Cascade Corp. v. United States, 296 F.3d 1339, 1352 (Fed. Cir. 2002) ("[A]bsent [the permanent] denial of a permit, only extraordinary delays in the permitting process ripen into a compensable taking.")); see also Seiber v. United States, 364 F.3d 1356, 1364 (Fed. Cir. 2004) ("[A] temporary `taking may occur by reason of extraordinary delay in [the] governmental decision making' process.") (citing Wyatt v. United States, 271 F.3d 1090, 1098 (Fed. Cir. 2001) (quoting Tabb Lakes, Ltd. v. United States, 10 F.3d 796, 803 (Fed. Cir. 1993))). The term "extraordinary," as construed by the courts, clearly excludes plaintiffs delay claim. For example, the Federal Circuit has held that "[an] eighteen month delay is far short of extraordinary," Appolo Fuels, 381 F.3d at 1351, and has rejected a claim that a ten-year delay in the issuance of a surface mining permit constituted a temporary taking. WYatt, 271 F.3d at 1097-1100; cf Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302 (2002) (refusing to hold that a 32-month federal ban on private land development constituted a temporary taking). In light of this precedent, a 147-day delay in the issuance of a permit, as alleged by plaintiff here, cannot constitute a compensable temporary taking.

C. Plaintiff's Claim for "Judgment by Estoppel"

In his complaint, plaintiff asks the court to grant the relief set forth in his "Administrative Judgment," discussed in Part I.C, supra. Plaintiff alleges that because MSHA "neglect[ed] to

controvert, rebut, or answer Plaintiffs Administrative Judgment/Summary Judgment[,] D[O]L/MSHA agreed not to litigate further[;] ... [therefore, plaintiff is entitled to] judgment by estoppel." Compl. at 20, ¶ 81. The court disagrees with plaintiffs conclusion.

As an initial matter, there is substantial doubt about the authenticity of plaintiff's "Administrative Judgment." See Part I.C, supra. The court notes the odd circumstance that plaintiffs claim allegedly was decided in California, yet the "Administrative Judgment" was recorded in Utah. The "Administrative Judgment" does not identify the tribunal, administrative or otherwise, that ruled in the matter. The sole witness/declarant whom plaintiff relied on to state his claim also served as "judge" in the matter. That same sole witness/declarant /"judge" sometimes writes in the first person voice of plaintiff.

Even assuming that plaintiffs "Administrative Judgment" had been rendered in a California court or administrative tribunal, the judgment would have no legal effect. The United States "is immune from suit save as it consents to be sued ... and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." United States v. Sherwood, 312 U.S. 584, 586 (1941) (citations omitted); see also McElrath v. United States, 102 U.S. 426, 440 (1880) ("[The Government] can declare in what court it may be sued, and prescribe the forms of pleading and the rules of practice to be observed in such suits."). Further, "[t]he Federal Government's consent to suit against itself, without more, in a field of federal power does not authorize a suit in a state court."

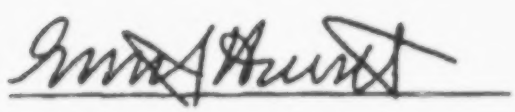
Great N. Life Ins. Co. v. Read, 322 U.S. 47, 54, n.6 (1944); see also West v. Gibson 527 U.S. 212, 226 (1999) ("It is settled law that a waiver of sovereign immunity in one forum does not effect a waiver in other forums."). And the United States' consent to be sued must be "unequivocally expressed" in a statute; consent may not be inferred from the United States' silence. Lane v. Pena, 518 U.S. 187, 192 (1996); see also Lehman v. Nakshian, 453 U.S. 156, 161 (1981) ("[L]imitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied."). In this case, plaintiff has failed to establish that defendant has expressly consented to be sued in plaintiff's state administrative tribunal; accordingly, plaintiff's "Administrative Judgment" is without effect and his claim for "judgment by estoppel" must fail.

III. Conclusion

For the foregoing reasons, defendant's motion to dismiss is GRANTED, and plaintiff's motion for summary judgment is rendered MOOT. The Clerk of the Court shall DISMISS plaintiff's complaint as to his claim for a Fifth Amendment taking with prejudice, shall DISMISS the balance of plaintiff's complaint without prejudice, and shall ENTER JUDGMENT for defendant. No costs.

IT IS SO ORDERED.

EMILY C. EWITT Judge



Note: ***Plaintiff was denied timely petition for rehearing, which refused/rejected offer order and opinion for fraud in violation of Plaintiff's right for access to the court.*** See order

Bartlett J. Hanford
c/o P.O. Box 918
San Andreas, CA
95249

UNITED STATES COURT
OF FEDERAL CLAIMS

Bartlett-Jay: Hanford **Petitioner**	**Emily C. Hewitt, Judge** **Case no. 04-504L**
UNITED STATES **OF AMERICA** **Defendant(s)**	**Rejection of Order And Opinion Offer Nov. 23, 2004 and Clerks order Nov. 23, 2004 as void on grounds of Fraud FRCP Rule 9(b)**

Comes Now, Bartlett-Jay: Hanford Appellant in the above entitled action and rejects the order and opinion offer dated November 23, 2004 and clerks order offer file stamped November 23, 2004 to contract for subject matter jurisdiction under Truth in lending regulation Z. Date offer to deny First Amended Complaint received December 18, 2004 and date offer rejected for Dismissal of first amended Complaint December 18, 2004.

Appellant believes the order void on the grounds of Fraud for the following reasons:

1) There was no compelling Federal Interest for MSHA to inspect my exploration Project, No eminent danger, No exigent circumstances, no threat to the peoples Health, Safety Moral and Welfare; the participation by MSHA was un-reasonable abuse of police power. My Magazine was for intra state use and not interstate. The court was in error that there

was some requirement that it meet Federal Standards. ATF was asked to inspect the magazine from three different offices and they all refused, saying I need a federal license for ATF to be involved. The memorandum of understanding between MSHA and ATF is for applicants and permitees of ATF, which didn't apply to me, the plaintiff. It was the will of intent for the Sheriff and MSHA to invade my property and shut me down saved only by the death of the MSHA inspector from a heart attack. I never gave permission for MSHA to accompany the sheriff. I had no contract with MSHA.

2) The decision is inconsistent with rulings of this court which give great weight to pre-existing rights. **Hage v US.** Plaintiff had pre-existing rights. Plaintiff was on a patented mining claim the rights go back to the date of location. US v Etcheverry 230 F. 2nd 193 and many more. That for the court to think I had to deal with MSHA is a Fraud and to blame plaintiff that he was some how responsible for the physical invasion by MSHA is a Fraud FRCP Rule 9(b). The court totally ignores my administrative process, which I had the right to the process; Title 5 USC 552 et seq. and rules in favor of Title 30 USC 801 et. seq. against the constitutional rights of the private party which it has a duty to uphold.

3) After it was learned that MSHA planned to trespass and physically invade plaintiff's exploration project for the purpose of destroying it, The Secretary, Key officials and field agents were served a controversy of law and accompanying affidavits, constructive notice and a bill of particulars. Also, a memorandum of law which told MSHA, if they moved forward against me without resolving the issue of law squarely before said agency at the onset of the tumult they would be committing felonies. They received service in early March 1999. Totally disregarding Plaintiff's right for administrative process. MSHA moved forward against me April13,1999 joining the sheriff in a state inspection as a federal agent without a warrant in violation of the Fourth Amendment of the united States Constitution. MSHA

had Title 42 USC 1986 knowledge thru constructive notice that they were violating my right to mine and fundamental liberties. MSHA moved forward against me with the evil intent and negligence, without resolving an issue of law squarely before said agency which cements MSHA's involvement in the conspiracy. The court totally dis-regards plaintiff's right for a meaningful administrative process. MSHA had to resolve the issue of law, i.e. Whether Plaintiff had the constitution and the right to mine or whether Plaintiff's right to mine on property with pre-existing rights was trumped by the codes contained in Title 30 USC 802 et seq. Obviously, this court and MSHA believes my constitutional rights are subordinate to those contained in Title 30 USC 801 et. seq. and that there is an un-revealed unilateral that somehow binds Plaintiff so that he can only be heard on the letter of the statute contained therein. It is a Fraud to ignore this administrative process and to say that MSHA had any rightin the inspection of my magazine and rule in favor of the Statutes over fundamental liberties and my right to mine. MSHA's involvement is strict liability crimes. I object to the ruling. The non-responsiveness of MSHA can not be equated with fairness and good faith and their motion to dismiss should have been striken on the grounds of a failed administrative process, which the court ratified. Further, I had the right to know the nature and cause of the MSHA's involvement with my exploration project. MSHA's denial of my right to know the nature and cause of there action in a timely bill of particulars is a clear violation of my 5th and 6th amendment rights of the united states constitution

First three grounds other on file with the Court of Appeal with the Federal Circuit.

In The United States Court
of Federal Claims
No. 04-504 L
(Filed February 1, 2005

BARTLETT J. HANFORD
Plaintiff

V

THE UNITED STATES
Defendant

ORDER

The court has before it a document for Plaintiff titled "Rejection of order and opinion offer.... As void on grounds of FRCPRule 9(b)" (Plaintiff's Rejection); Received December 28, 2004. Because there is no provision in the Rules of Court of Federal Claims for the filing of Plaintiff's Rejection, the Clerk of the Court is directed to RETURN the document to plaintiff unfiled.

IT IS SO ORDERED

EMILY C. HEWITT
Judge

United States Court of Appeals
For the Federal Circuit
05-5043

BARTLETT J. HANFORD
Plaintiff-Appellant

V

UNITED STATES
Defendant-Appellee

Judgment
ON APPEAL from the UNITED STATES COURT OF FEDERAL CLAIMS
In CASE NO(S) 04-CV- 504L

The CAUSE having been heard and considered; it is ORDERED and ADDJUDGED: AFFIRMED
DATED: Nov 14, 2005
ENTERED BY ORDER OF THE COURT

Jan Horbaly, Clerk

NOTE: Pursuant to Fed Cir 47.6, this disposition is not citable. it is a public record.

United States Court of Appeals for the Federal Circuit

05-5043

BARTLETT J. HANFORD

Plaintiff-Appellant

v.

UNITED STATES

Defendant-Appellee.

DECIDED: November 14, 2005

Before MAYER, RADER, and DYK, Circuit Judges

PER CURIAM.

Bartlett J. Hanford seeks review of the order the United States Court of Federal Claims dismissing his complaint. Hanford v United States, No. 04-CV-504L (Fed. Cl. Nov 23, 2004). We affirm

On March 29, 2004, Hanford filed a complaint seeking relief on seven counts: five

claims arising from non-money-mandating constitutional provisions (a Fouth Amendment claim, two Fifth Amendment due process claims, a sixth Amendment claim, and an Article VI Supremacy Clause claim), a takings claim, and a claim to enforce an "Administrative Judgment" purportedly rendered by a state administrative tribunal in California. The trial court dismissed the constitutional claims for lack of subject matter jurisdiction; whether it properly did so is a question of law that review de novo. See Boyle v United States, 200 F. 3rd 1369, 1372(Fed. Cir 2000). The jurisdictional statutes governing the United States Court of Federal Claims only grant authority to that court to issue judgments for money against the United States, provided that the claims are grounded in a contract or arise pursuant to a money-mandating statute, regulation, or provision of the Constitution. See 28 U.S.C. § 1491; United States v Testan, 424 U.S. 392, 397 (1976). Because Hanford's constitutional claims

do not fall within the jurisdictional grant, the trial court properly dismissed these claims for lack of jurisdiction.

We review de novo the trial court's dismissal of Hanford's takings claim for failure to state a claim upon which relief can be granted. See Boyle 200 F. 3d at 1372. To support his claim, Hanford alleged that the inspector for the Federal Mine Safety and Health Administration ('MSHA') engaged in actions which caused a 147 day delay in processing his application for a local explosives permit, thereby giving rise to a temporary taking of his mine. The trial court properly found that Hanford failed to state a claim upon which relief can be granted because even if the MSHA inspector's actions caused the delay, is insufficient as a matter of law to constitute a temporary taking. See Appolo Fuel, Inc. v United States, 381 F. 3rd 1338, 1351 (Fed Cir 200 4). Finally, the trial court properly dismissed his claim to enforce the

"Administrative Judgment" because the judgment, even if authentic, was not rendered pursuant to any waiver of sovereign immunity by the United States government, meaning it had no legal effect. See eg., Lane v Pena, 518 U.S. 187, 192 (1996).

United States Court of Appeals
For the Federal Circuit
05-5043

BARTLETT J. HANFORD
Plaintiff-Appellant

V

UNITED STATES
Defendant-Appellee

Judgment
ON APPEAL from the UNITED STATES COURT OF FEDERAL CLAIMS
In CASE NO(S) 04-CV- 504L

The CAUSE having been heard and considered; it is ORDERED and ADDJUDGED: AFFIRMED
DATED: Nov 14, 2005
ENTERED BY ORDER OF THE COURT

Jan Horbaly, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARTLETT J. HANFORD)
Plaintiff)
) CV 01-0443
v.) (RCL)
) FILED
MINE SAFETY AND HEALTH) APR 23 2002
_____)

ORDER

Pursuant to the Memorandum Opinion issued this day, the Court hereby GRANTS defendant's motion to Dismiss. This case shall be dismissed for lack of jurisdiction.

SO ORDERED.

_____
Royce C. Lamgerth
United States District Judge

Date: 4-22-02

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

NO. 02-5199 **Septmeber Term 2003**
01 cv 00443

Filed on
Feb 10, 2004

Bartlett-Jay: Hanford
Appellant

V

Mine Safety and Health
Appellees

Consolidated with 93-5244

Before: Ginsburg, Chief Judge, and Henderson and Randolph, Circuit Judges

O R D E R

Upon consideration of the petition for rehearing en banc; the addendum thereto, and the absense of a request by any member of the court for a vote, it is

ORDERED that the petition for rehearing enbanc be denied. His notice of appeal from the district court's order filed April 23, 2003 was untimely. Nor do any of appellant's other arguments warrant the full court's consideration
Per Curiam

FOR THE COURT
Mark J. Langer, Clerk

FILED
MAY 2 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(3)

CASE NO. 06-1120

In The

Supreme Court of the United States

artlett- Jay Hanford, Petitioner

v.

Aine Safety and Health Administration,

Respondent(s)

On Petition For Writ of Certiorari
United States Court of Appeal
for the Federal Circuit
Washington D. C. 20439

PETITION FOR REHEARING

Bartlett-Jay: Hanford
P.O. Box 918
San Andreas, California 95249
(209) 754-1752

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INTRODUCTION

The Mine Safety and Health Administration (MSHA) planned a surprise attack against petitioner, which was averted by the death of the inspector from a heart attack. Upon learning of their sinister scheme, the secretary of labor, undersecretaries of MSHA and local field agents where served an issue of law by USPS green card service that MSHA must resolve before coming against petitioner. Also, constructive notice was given to Key officials they were violating petitioners inherent rights. MSHA ignored petitioner's due process rights and stayed in the tumult joining with the sheriff to deny petitioner explosives essential for the operation of the mine. Having Title 42 USC 1986 knowledge of the crimes by a memorandum of law served MSHA, they should have waited for a more opportune time and allowed the permit to issue when a valid legal process either an injunction or forth amendment warrant could be obtained, Instead they complicated the permit process making the permit contingent upon inspection of the mine as an act of extortion. MSHA caused 147 day delay in the ability to purchase explosives, which was a de-facto ban on mining that goes against the congressional intent of congress, which permits and

encourages mining. Petitioner was a sole miner, operating on a patented mining claim and was a INTRASTATE of explosives. There was no effectuation of a substantial federal purpose for MSHA to deny me the tools of the trade. The action of this agency was willful having knowledge prior to coming against petitioner. Without due process of law petitioner was injured by loss of his liberty, liberty, mining, livelihood right without proper legal process of an injunction or four amendment warrant by MSHA. It appears explosives rather than being a tool for the miner is a ruse to deny petitioner his inherent rights and the court rules the police power of MSHA is absolute and ratifies this administrative agency is answerable to NO ONE against the first amendment right to petition the government for their participation in a extortion plot to deny petitioner his vested mining right established by driving over 3000 feet of tunnel and 600 feet of shafts and raises over nine years. The rehearing brings to light the Disability of Judge, Hewitt which focuses on an affidavit filed with the motion to dismiss and the prejudice of the judge allowing the record to be falsified through the content of un-sworn testimony of the U.S Attorney in his motions and relied upon that information in the motion to file the Judges opinion not supported by facts or evidence.

The U.S. Attorney having no personal knowledge to testify; against the basic rule of fairness, which should have been afforded petitioner in violation of federal rules of evidence 602. No counter affidavits were filed by the U.S. Attorney. Further disability Title 28 372 (c) was exhibited through the denial of Petitioner's timely Rejection (Rehearing) to vacate the opinion of Judge Hewitt on grounds of fraud denying Petitioner access to the court. A partial text appears in Petitioner's Appendix.

REASONS FOR GRANTING THE WRIT

I PETITIONER FILED AN AFFIDAVIT OF TRESPASS IN SUPPORT OF OPPOSITION TO DISMISS

Petitioner filed an affidavit. It is a criminal offense to file a false affidavit, I noticed I am not under arrest for filing a false affidavit, so it is clear that my affidavits are true, correct, and accurate; an affidavit is a statement of truth. Was Judge Hewitt prejudice toward petitioner deliberately denying the truth causing injury to petitioner through falsifying the record to take advantage of my un-represented status. When the U.S. Attorney whom a motion

is opposed fi[illegible]no counter affidavit, the trial court is entitled to accept the allegations of the petitioner in this instant case as true. The allegations of the petitioners affidavit must be construed as true nullifying the testimony made in the U.S. Attorneys motion, which are a sham due to lack of personal knowledge in violation of evidence code 602 causing Judge Hewitts opinion to be stricken. Without a counter affidavit by the U.S. attorney in opposition to the affidavit of Tresspass it must be assumed the Mine Safety and Health Administration cannot dispute the truth of statements in the affidavit or in this case cannot controvert them.

The judges oath is the highest oath, a solem promissary contract that is a contract (in law) and any breach of this obligation of fiduciary relationship causes the liability of **"fiduciary debt"** to attach to Judge Hewitt. When the judge received the Affidavit of Trespass this was imputed knowledge, which the judge was not to ignore. Jurisdiction by Judge Hewitt , even by presumption, is destroyed and there can be no claim for immunity in the willful violation of the truth concerning petitioners Affidavit of Trespass filed in opposition to the motion to dismiss. The criminal/civil acts of MSHA must be taken as true for lack

of a counter affidavit and no one with personal knowledge allowed to enter evidence into record, the Court of Claims may not dissmiss for failure to state a claim unless it appears that the petitioner can prove no set of facts in support of the claim which would entitle him or her to relief. *Hishon King v Spalding* 457 US 69, 73 (1984). Without the prejudice and disability of Judge Hewitt ignoring the truth, the case incorporation 04-504L (ECH), could not be dismissed. Judge Hewitt took advantage of an un-represented party, denying the truth, and allowing false statements in the motions by the U.S. Attorney to be entered into the record without personal knowledge in violation of her oath of office. The Affidavit filed in the opposition of the motion to dismiss is shown below:

United States Court of Federal Claims

Bartlett J. Hanford
Plaintiff

V
United States of America,
Defendant

Case no. 04-504L
Judge Emily C. Hewitt

Affidavit in Support of
Motion not to dismiss

AFFIDAVIT OF TRESPASS

Of Demand for Taking Judicial Notice
Under Federal Rules of Evidence Code 201(b)

State of California)
) **SS**
County of Calaveras)

I, Bartlett-Jay: Hanford, Affiant as un-represented party and being over the age of twenty one (21)is competent to testify to the facts herein based upon first hand knowledge and belief and do affirm that that the facts herein are true, correct and complete

The affiant, Bartlett-Jay: Hanford does declare the following:

1. that, Affiant presents this Affidavit as the highest form of prima facie evidence in this mater, **U.S. vs. Kis**.658 F2d. 526, 536, and;

2 that, this affiant will be the direct evidence that overwhelms the Governments's "primary evidence" of presumptions until this Affidavit is fully rebutted; and,

3. that, Affiant now presents to this court the citations of authority that are self-executing constitutional provisions that allows this court knowledge of affiant's title of full right status and not diminished by the Government's fraudulent claims that Affiant is knowing and willingly involved with Government in some form of government function; and,

4. that, self-executing constitutional provisions stand as the sufficient rule of this instant case which is effective immediately and evidences rule by which guaranteed rights are to be enjoyed or duty of government imposed and enforced, **Cleary vs. Kincaid**, 23 Idaho, 769, 131 p. 1117, 1118; **Strange vs. City of Cleavland**, 94 Ohio St.377, 114 N.E. 261, 262; and,

5. that, Affiant, "Aggrieved Party" hereby demand this Honorable Court to take Judicial Notice pursuant to rule of evidence 201 (b) of the following facts;

6. that, you Judge *judge*, have imputed knowledge of the fraud perpetrated on myself, Affiant, by the colorable, alleged Motions, of Defendants by virtue of the following:

BEST AVAILABLE COPY

A. Affidavit contained in first amended complaint.

7. that, this Aggrieved Party now respectfully notices this Honorable Court of the following facts:

A) Plaintiff had operated his exploration for nine years with rights vested from continual use of the patented mining claim for the highest and best use which congress intended. For the Defendant(s) to deny Plaintiff tools (explosives) for which Plaintiff had a clear legal right was an abuse of authority; trespass ab initio *Leger v Warren* 82 Ohio St. 500. 57 N. E. 506, 508 (1900) a denial of vested rights by the Defendant(s).

B) In an organized enterprise with the Sheriff upon the third cancellation for the magazine Inspection when it was reported the one of the defendant(s) died of a heart attack that the Defendant(s) were planning an invasion; in other words, Trespass upon my patented claim without permission in violation of vested rights by the will of intent of Defendant(s).

C) When the Sheriff said to move the magazine to the surface, the defendant(s) no longer Had any authority, if they ever had authority, the inspection became a state issue, unless the Calaveras Deputy Sheriff was a fraud i.e. saying he was qualified to inspect magazines and wasn't qualified. To detain Plaintiff his tools (explosives) for 147 days because Defendant(s) wanted to inspect my operation, when their was no compelling federal Interest was and abuse of authority trespass ab initio ibid. by Defendant(s). MSHA Agent Davis saying they had no jurisdiction at the site and the Sheriff could have Inspected the magazine.

D) Plaintiff had a mining right, property, livelihood, and liberty right, to deny Plaintiff tools (explosives) after nine years of operation for which he had a clear legal right, essential for his operation, without notice, discovery or hearing is a trespass ab initio, Ibid., of the worst kind by Defendant(s)

E) By neglect of due process of law Defendant(s) in a co-

business organized enterprise with the Calaveras County Sheriff, Plaintiff was irreversibly injured under Cal Penal Code 519 extortion, trespass ab initio Ibid., making a simple magazine inspection contingent upon inspection of Plaintiff's operation by Defendant(s).

F) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority when applying enforcement against Plaintiff in one of the several 50 states, Defendant(s) authority being Title 4 USC 72.

G) Denfendant(s) had no authority causing a trespass ab initio Ibid. abused authority without a valid contract in place between Plaintiff and Defendant(s) to deny Plaintiff explosives necessary to operate his exploration.

H) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority because there was no authority given MSHA in a memorandum of understanding Between ATF and MSHA to deny tools (explosives) necessary to operate his exporation. Plaintiff not a permittee or applicant of ATF and intra state user.

I) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority having no authority on Plaintiff's patented claim to deny Plaintiff (explosives) without a valid reservation; the Rights of Plaintiff going back to the date of location. US v Etheverrey 230 F.2nd 193.

J) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority through coercion, making veiled threats under Title 28 USC chapter 85 1359.

K) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority having knowledge of an issue of law thru a memorandum of law and failing to resolve said issue of law moving forward against Plaintiff deprived him of tools (explosives)needed to operate Plaintiff's patented claim.

L) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority denying Plaintiff tools (explosives) to operate his patented claim and denying the right to know the nature and cause of their action by a Bill of Particulars.

M) Denfendant(s) had no authority causing a trespass ab initio Ibid. abused authority needing a 4th Amendment warrant to accompany a state official in a state inspection.

Verification: I the Accused, under oath, affirm that I am competent in the testimony of the matters herein stated: and that I have personal knowledge of the facts herein stated: and I declare under the penalty of perjury that the forgoing is true, correct, complete, certain, not misleading, upon information and belief: and submitted in good faith and not in bad faith.

Dated this 1 day of July 2004

Signed:

Bartlett Hanford

JURAT NOT REPRODUCED appears with opposition of motion to dismiss.

A second disability of Judge Hewitt exist in the refusal to file a timely rehearing to her opinion by petitioner The refusal to file the rehearing objecting to her opinion was a denial of petitioners access to the court. Judge Hewitt opinion was not supported by Facts or Evidence:

a) The Judge refused to acknowledge the service of process on key officials and field agents and the willful violation/trespass upon mining/ inherent rights of petitioner and further failed to mention the five presentments made in

the form of affidavits, that was never addressed in the judges opinion for the purpose of obtaining redress for the loss of production in the administrative process that preceded this case.

b) It was a fraud in the Judge's opinion to say that the magazine was to meet federal standards. Petitioner was an INTRASTATE use of explosives no federal jurisdiction, no effectuation of substantial federal purpose. How could MSHA inspect the magazine when ATF refused to inspect because no federal jurisdiction.

c) The judge refused to allow evidence presented in Petitioner's affidavits in the complaint and the opposition of the motion to dismiss, saying MSHA wasn't involved, allowing the record to be falsified by entering evidence into the record against federal rules of evidence 602 by those with no personal knowledge. It was a fraud to say MSHA involved, when it was Peitioner's right to offer proof. " Allegations such as those asserted by Petitioner, (a pro se litigant), however in artfully pleaded are sufficient to offer supporting evidence, accordingly, although we intimate no view on the merits of Petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof." *Haines v Kemer* 404 U.S. 519, 522.

II COMPLAINT IN COURT of CLAIMS WRITTEN AS AFFIDAVIT OF NEGATIVE AVERMENT; PETITIONER HAD STIPULATED AGREEMENT AS TO FACTS of CASE INCORPORATRION 04-504L

The U.S. Attorney knows the judge is on their side. Petitioner files a complaint, the U.S.Attorney files a motion to dismiss and prints out boiler plate to support their position knowing by their status anything but outrageous will defeat all petitioners. Petitioner's complaint was an affidavit. Each cause of action, a negative averment, where Petitioner's negative affidavit became a stipulation agreement of the facts which Petitioner witnessed did not exist- therefore, there were no facts in controversy without a response point by point to the negative affidavit by the U.S Attorney. The stipulations were rejected by Judge Hewitt with her knowledge even though there was no counter affidavits by the U.S. attorney to each negative averment made by Petitioner in the case, dismissing the case, causing a valid claim to defeated. when the facts were agreed to by the U.S. Attorney. With agreement of the facts by the parties Judge Hewitt had no discretion but to rule in favor of the petitioner.

III- DUE PROCESS, FOURTH AMENDMENT CLAIMS, SUPREMACY CLAUSE CLAIMS DISMISSED BY COURT OF CLAIMS VALID FOR THE SUPREME COURT TO REVIEW.

Emily C Hewitt, Judge of the petitioner's case in the U.S court of federal claims dismissed petitioner's two due process claims, supremacy clause claim, and fourth amendment claims without prejudice saying the court was of limited jurisdiction. The supreme court has jurisdiction to review those claims.

Due Process Count 1

Petitioner's mining right was suspended having vested from nine years of mining, having obtained permits for explosives annually. Petitioner worked diligently completing 3000 feet of drifts and 600 feet of shafts and raises. The mining right cannot be taken away, as it was done by MSHA with knowledge, without a hearing to terminate the mining operation, depriving petitioner of his explosives without due process of law under the fifth amendment. *U.S. v Etcheverrey* 230 F 2nd 193: *Pennsylvania Coal Co. v Mahon*. 260 U.S. 414.

Due Process Count 2

Petitioner suffered irreversible damage from the suspension of his mining, liberty, livelihood and property right by the participation of MSHA in concert with the sheriff in an extortion plot making a simple explosive permit contingent upon inspection of the mine. Petitioner billed MSHA, but they agreed with petitioner's claim by their non-response to Petitioner's affidavits, which included accounting and an engineers report. An administrative judgment was recorded against MSHA and became binding upon MSHA, filed in the public record for over 30 days for failure to respond. No matter what vehicle Petitioner may chose, the judgment showed that **MSHA answers to NO ONE, By Neglect of due process of law, Petitioner was injured, under the fifth amendment and deny the right to petiton an Administrative agency by MSHA.**

Supremacy Clause Claim

Petitioner was an INTRASTATE user of explosives operating on patented mining claim where the rights go back to the date of location. MSHA was barred by the reservations in the patent; encumbrances, covenants and restrictions not within thereservation of the patent are barred. *Summa Corp. v. California ex rel. Lands Comm'n,*

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466 U.S. 198 (1984). Congress permits and encourages mining Title 30 USC 22. That for MSHA to engage in extortion plot to deny Petitioner

Explosives, making an OBSTACLE for mining goes against the congressional intent of congress. Without an injunction or fourth amendment warrant there was no effectuation of a substantial federal purpose making MSHA involvement criminal having knowledge of the crimes committed against Petitioner prior to coming against petitioner. Laws which prohibit the lawful use of the sovereign property, which the supreme sovereign permits and encourages is violative of the Supremacy Clause Article VI section II. http://laws.findlaw.com/8th/973861p.html U.S. 8th Circuit Court of Appeals *SD Mining Assoc. v Jack Cole*

Fourth Amendment Claim

Petitioner was an INTRASTATE user of explosives and chose to be a sole operator until enough ore could be discovered to warrant the un-reasonable regulation of MSHA. Petitioner wasn't under the guise of MSHA, either an injunction or forth amendent was a requirement for MSHA to participate in a co-business venture with the sheriff. *Marshall v Waite* 628 F.2nd 1255 (1980)

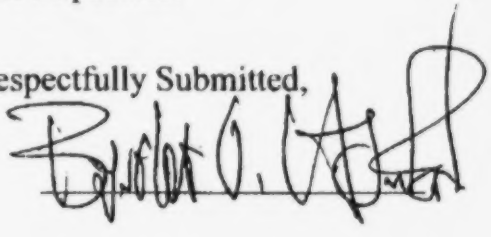
For MSHA to participate in State Search with a State Officer a Fourth Amendment Warrant is a requirement. MSHA, wilfully participated in a State Search without valid court process. *Byers v US* 273 US 313, 317 (1921)

CONCLUSION

Petitioner was allowed to offer proof in support of his claim. Judge Hewitt, allowed the record the record to be falsified, allowing those attorneys without personal knowledge to file un-sworn testimony into the record in defiance of evidence code 602 and dis- allowed the affidavit of petitioner. As a second disability of Judge Hewitt Title 28 USC 372 (c), who wanted **NO OPPOSITION** to her opinion, deceitfully drafted, refused to file petitioner timely request for rehearing in violation of petitoner's first amendment right/access to the court. Her opinion/ruling is striken/void on grounds of fraud and judicial disability with regard to evidence and Petitioner's right to present evidence/proof in the form of affidavits. Petitioner believes his other claims dismissed by Judge Hewitt, without prejudice, are reviewable by the Supreme Court. The

behavior of a errant judge cannot blemish the integrity of the court, therefore must allow Certiorari on the grounds of the affidavit to ensure uniformity of the law regarding the same. Judge Hewitt prayed on the un-represented status of the Petitioner, fully aware of the fruadulent activities of the Judicial Branch that are obvious evidence of de facto government in active, open operation of levying **mixed war** against the people of the united States to displace the lawful de jure, usurped government. MSHA is engaged in constructive treason, denying the people of the united States valuable mineral products. With a rule book two feet high, MSHA has essentially destroyed underground mining in the united States, driving mineral producers to foreign countries to avoid their wrath of impossible regulations and imposing such extreme cost to drive the cost of producing mineral beyond the market price of the metal. So many mines have closed the employees of MSHA have been reduced to gravel pit inspectors.

Respectfully Submitted,



UNITED STATES SUPREME COURT

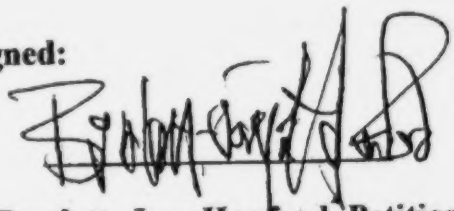
Hanford v Mine Safety and Health Administration

06-1120

CETIFICATE

The forgoing Petition for Rehearing is submitted in good faith and not for delay.

Signed:



Bartlett- Jay: Hanford, Petitioner